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Judge: Hon. Marc L. Barreca
Chapter: 7
Hearing Date: March 2, 2012
Hearing Time: 9:30 a.m.
Hearing Location: 700 Stewart St.
Room 7106
Seattle WA 98101
Reply Date: February 24, 2012

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON, AT SEATTLE

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| In re<br><br>ADAM GROSSMAN<br><br>Debtor, | NO. 10-19817<br><br>TSAI LAW COMPANY'S RESPONSE TO TRUSTEE'S MOTION FOR AN ORDER COMPELLING COMPLIANCE OR FOR TURNOVER |

Special Counsel Tsai Law Company, PLLC., requests denial of the Trustee's motion to compel compliance with previous court orders or for turnover on the basis that 1) the Trustee misrepresents the prior orders of the Court and 2) collateral estoppel/law of the case. The motion should also be denied as the Court has previously denied a disgorgement request for the monies received by Tsai Law Company and the Court has provisionally approved Tsai Law Company's request for $62,079 fees and costs in a prior motion heard by the Court. That request contained a full accounting of all monies received and spent, including the $27,500 at issue, which was received from third parties and is not part of the debtor's estate. Tsai Law Company has complied with the Court's order by turning over the $29,500 specified in the order.

## I. STATEMENT OF FACTS

The following is a summary of the relevant facts. Further detail may be found in Debtors Application to Employ Emily Tsai (Document No. 42), Debtor in Possession's Objection to

Borodin's Motion for Order For Disgorgement (Document 50), Application of Compensation and Reimbursement of Expenses of Tsai Law Company (Document 150), and Reply of Tsai Law Company RE: Trustee's Objection to Application for Compensation (Document 177).

Tsai Law Company was initially retained by Debtor Adam Grossman on September 16, 2010, for the limited purpose of taking five depositions related to his marriage dissolution action in King County Superior Court. (Exhibit A to Declaration of Emily Tsai, Document 150.) The source of the Debtor's $7,500 flat fee payment was Peter Hendrickson, a disinterested party (Tsai declaration, Document 150, page 2, line 15.)

On October 13, 2010, Debtor retained Tsai Law Company to represent him in the dissolution action (Exhibit B, Document 150). Debtor paid Tsai Law Company $5,000 (which was returned to Debtor) and Lyman Opie paid Tsai Law Company by check in amount of $20,000 on behalf of Debtor (See Exhibit 1, e-mail from Mr. Opie to Emily Tsai).

On November 4, 2010, Debtor filed a Motion to Employ Emily Tsai (Document 42). In support of the motion, Emily Tsai filed a declaration disclosing the sums received from Mr. Hendricksen, Mr. Opie, and Mr. Grossman (Document 43). At the same time as Debtor's Motion to Employ was heard, a Motion for Order for Disgorgement was brought by Debtor's now ex-wife, Jill Borodin, for disgorgement of the $7,500 and "all other amounts paid by the Debtor to Ms. Tsai to date…"(Document No. 28, page 5, line 17). The disgorgement motion was denied (Document 63). The Application to Employ was granted by the Court (Document 42-1). In granting the Application to Employ the Court held "that Debtor has provided a satisfactory explanation for the failure to obtain approval in (sic) advice of employment".

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Tsai Law Company proceeded to represent Debtor in his marriage dissolution, which included property division, which was not stayed by the bankruptcy proceeding (Tsai Declaration, Document 151, page 5, line 67). Mr. Grossman's representation was also necessary to rebut the Debtor's wife's gross exaggeration of the value of the community estate (Document 151, page 6, lines 45-57)

On April 22, 2011, Tsai Law Company filed an Application for Compensation and Reimbursement of Expenses in amount of $62,079 (Document 150). The $62,079 application included a credit for the $27,500 already paid to Tsai Law Company (Document151, lines 23-31). At that time, Tsai Law Company disclosed that the $27,500 received from Mr. Hendrickson and Mr. Opie "were first deposited into the undersigned's IOLTA trust account, and have been previously drawn down by the undersigned for professional services rendered to Debtor in Debtor's divorce proceeding" (Document 150, page 2, line 23-25, Document 151, page 3, line 13-15).

In the motion, Tsai Law Company also disclosed that it had received $29,500 from two sources, Dennis Vidach and Susan Myers, and was holding the money in its IOLTA Account, and requested that the Vidach/Myers money be applied to the outstanding bill (Document 150, page 3 lines 3-15).

On June 13, 2011, the Court provisionally approved the request for $62,079, but ordered the $29,500 held in the Tsai Law Company IOLTA account pending further hearing (Document 196). The order does not specifically reference the already drawn $27,500.

On September 2, 2011, the Trustee filed a Supplemental Objection to the Application for Disbursement, requesting that Tsai Law Firm "turn over all funds it is holding to the

Trustee"(Document 215, page 5, line 4-5). The objection was based on the Trustee's belief based on bank records that Mr. Vidach and Ms. Meyers did not purchase the $29,500 in cashier's checks.

Rather than continue to litigate the issue of the $29,500, Tsai Law Company agreed to strike the disbursement request "pending further investigation by the trustee of the assets and liabilities of this debtor" and turn over the money in its trust account (specifically the $29,500) to the Trustee (Agreed Order, Document 220). All money in the Tsai Law Company IOLTA account held for Debtor at the time the agreed order was entered has already been turned over to the trustee.

Without submitting any new evidence to the Court, the Trustee has now moved for an order requiring compliance with the previous orders of the Court (Documents 196 and 220), or alternatively for turnover of the $27,500. The motion should be denied as it was clear to all parties involved that the agreed turnover order applied only to the Vidach/Meyers $29,500, and not the Hendrickson/Opie $27,500. Absent any new evidence concerning the $27,500, the turnover motion should be denied as an improper collateral attack on the prior orders on file appointing counsel, denying disgorgement, and approving fees and costs.

## II. ARGUMENT

**A. The Court's has previously approved compensation and denied disgorgement.**

The doctrine of "law of the case" is a rule of practice under which a rule of law enunciated by a federal court "not only establishes a precedent for subsequent cases under the doctrine of stare decisis, but also establishes the law which other courts owing obedience to it

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*must*, and which it itself will, normally, apply to the same issues in subsequent proceedings in the same case." 1B Moore's Federal Practice para. 0.404[1] (2d ed. 1974) (footnotes omitted, emphasis in original). The doctrine is "based upon sound policy that when an issue is once litigated and decided, that should be the end of the matter." United States v. United States Smelting Refining & Mining Co., 339 U.S. 186, 198, 70 S. Ct. 537, 544, 94 L. Ed. 750 (1950); Fontainebleau Hotel Corp. v. Crossman, 286 F.2d 926, 928 (5th Cir. 1961).

The Court in this case has already appointed Tsai Law Company and denied the disgorgement motion as of November 12, 2010. The lateness of the motion to appoint was excused by the Court in the Order Appointing. At the same time, the Court denied debtor's former spouses request to disgorge the initial $7,500 received by Tsai from Hendrickson. The entire $27,500 which is the subject of this motion was before the Court on November 12, 2010, because Tsai Law Company disclosed that they had received these monies from Mr. Hendrickson and from Lyman Opie as of the date of the hearing, as well as the terms of the fee agreement which was fully approved by the Court.

In addition, the Court has approved Tsai Law Company's fees and costs which were requested as of April 25, 2011. As part of the Application for Compensation, Tsai Law Company set forth its time charges related to the case. It disclosed that it had drawn the $27,500, which had been received from Mr. Hendrickson and Mr. Opie, and credited the payment to Debtor's account to reach a balance due of $62,079. It also disclosed it was holding an additional $29,500 paid by Vidach and Meyers. Contrary to the assertions contained in the Trustee's motion, all funds received and all funds spent were disclosed to the Court.

The trustee filed a vociferous objection to the fee request. The objection raised the same claims of nondisclosure and noncompliance that are being raised in the instant motion, and claimed that the $20,000 from Mr. Opie was a loan and therefore property of the estate. The trustee requested turnover of all funds held by Tsai Law Company. The Court instead provisionally approved the fees and costs, and ordered Tsai Law Company to hold the $29,500 in its trust account, which it did.

The trustee has not appealed or moved for reconsideration of any of the orders pertaining to the Tsai fee issue. Rather, the trustee has continued to replow old ground and rehash the same arguments that have been raised repeatedly in multiple hearings. Given the denial of the disgorgement motion and the approval of the fee request which included an accounting of the $27,500, the Court should deny the motion as the Court is bound by its prior rulings.

Furthermore, as has been previously argued by Tsai Law Company in reply to the Trustee's fee objection (Document 177, page 3), collateral estoppel precludes further argument that the $27,500 constitutes property of the estate. In re Berr,172 B.R. 299 (9th Cir. 1992). This is the third time this argument has been raised in this proceeding and the Trustee should be barred from making the same claim over and over again.

**B. Tsai Law Company has complied with the Court's Orders.**

The trustee argues that the orders dated June 13, 2011 (Document 196) and September 15, 2011 (Document 220) somehow mandate turnover of the $27,500 in addition to the $29,500 that was in the trust account. However, the plain language of the pleadings indicate that the orders refer only to the $29,500 received from Vidach/Meyers, not the $27,500 received from Hendrickson/Opie.

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The Court has previously denied a disgorgement request as to the fees received by Tsai as of November 12, 2010 (Document 63). The June 13, 2011 order refers specifically only to the $29,500. And as of the date of the fee application, all parties were aware that the only money held by Tsai Law Company in its IOLTA account was the Vidach/Meyers money, and nothing else. The language in the order requiring Tsai Law Company to "continue to hold in its IOLTA trust account all funds received in relation to this matter" refers to presently existing funds, and not funds which were formerly in the account. The Trustee's own objection to the fee request asks the Court to "order the Tsai law firm to turn over all funds it is holding to the Trustee" (Document 173, page 7, line 26).

Ultimately, to avoid further litigation on the issue, Tsai Law Company agreed to "turnover the funds in its trust account to the Trustee"(Document 220). This was not an agreement to turn over all funds the trustee "was claiming should have been" in the trust account, just an agreement to turn over what was held at the time. The Court should deny the motion to compel compliance as Tsai Law Company has complied with the orders, one of which was entered by agreement of the parties.

**C. No new evidence has been submitted is support of the turnover motion.**

The Trustee's turnover motion appears to be based on its arguments raised in previous motions and is not based on any new evidence before the Court. The $27,500 which is the subject of this motion was received from third parties and was not estate property. In any event, Tsai Law Company disclosed its existence to the Court and accounted for it in its fee request. The Trustee may argue, as they already have in opposition to the fee motion (Document 173),

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that the $20,000 from Lyman Opie was a loan to the debtor and therefore property of the estate. However, the $135,000 promissory note (Document 174, Exhibit 4) upon which this purported loan is based became due and payable in full three and one half months prior to the date of the $20,000 payment to Tsai. The note was extendible only by written agreement. In the absence of a written extension of the note, Mr. Opie's claim that he loaned an additional $20,000 to Mr. Grossman, post default of the $135,000 note, while Grossman was in Chapter 11 bankruptcy, is inconsistent with the documents provided. Nowhere on the check or the e-mail to Ms. Tsai (Exhibit 1 hereto) can the word "loan" be found.

As for the $7,500 from Hendrickson, no evidence exists that this money constitutes property of the estate. The Trustee's statement in the December 2, 2011 letter to Tsai that "I am unaware of the source of the $7,500" (Exhibit 3, Trustee's Motion) is completely at odds with reality, given that the source of this money was disclosed in two prior declarations of Emily Tsai and litigated in two previous motions.

In summary, the Court should deny the motion for turnover as it is not supported by evidence that has not already been argued, and there is no basis for turnover. The motion to compel compliance should be denied as the $29,500 has already been turned over by agreement of the parties.

Dated this 24th of February, 2012

/s/
John H. O'Rourke WSBA 21615
Attorney for Tsai Law Company

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# EXHIBIT 1

## Emily J. Tsai

**From:** Lyman C. Opie [l.c.opie@verizon.net]
**Sent:** Thursday, October 07, 2010 9:53 AM
**To:** Emily Tsai
**Cc:** arg@adamreedgrossman.com
**Subject:** Payment for Adam Grossman's account
**Attachments:** argpayment.jpg

Dear Ms. Tsai,

Please find attached a screenshot from my on-line bill payment system, reflecting a payment in the amount of $20000 that I have sent you for Adam Grossman's account. The check should reach you in three business days or so.

Please don't hesitate to contact me if you have any questions.

Very truly yours,

Lyman C. Opie
781-856-5773

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https://paybills.citizensbankonline.com/cw411/wps

Linux GLD MLE S1 L P

Payments

Help | Log Out

Accounts | Pay Bills | Transfers | Service Center

Add a Bill | Bill History | Manage My Bills | Bill Pay Alerts

## yment Confirmation

Print

u've paid the following bills. If you want to keep any additional information on file with the bill, click the **Note** link.

| r Name | Account | Amount | Pay Date | Confirmation | | |
|---|---|---|---|---|---|---|
| Law | CIRCLE GOLD CHECKING WITH INT x39127 | $20000.00 | 10/13/2010 | BNDF8-ZCMK1 | acct of Adam Grossman | Not |

Total: $20,000.00

View it. Pay it. That's it.

Set up flexible recurring payments
✔ Make your own payment schedule
✔ Easily change payment dates and amounts

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